

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 8177 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

=====

GUSHABHAI HARIBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

=====

Appearance :

MS TEJAL K SHAH FOR MS ROOPAL R PATEL for Petitioner(s) : 1,
MR M R MENGDEY AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,
MR PRASHANT G DESAI for Respondent(s) : 4 - 5.

=====

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/05/2007

ORAL JUDGMENT

1. Ms.Tejal K. Shah under the authority of Ms.Roopal R.Patel,
learned counsel for the petitioner, Mr.M.R. Mengdey,
learned Assistant Government Pleader for the respondent

Nos.1 and 2 – State. None for the respondent No.3, though served. Mr.Prashant G.Desai, learned counsel for the respondent Nos.4 and 5.

2. Short facts necessary for disposal of the present writ application are that the respondent – Surat Municipal Corporation opted for a Town Planning Scheme, Town Planning Scheme No.15 was accordingly framed, a proposed Primary Scheme was floated, objections were invited and thereafter, the Scheme was finalised. Undisputedly, Final Plot No.103 in the Final Town Planning Scheme was reserved for public housing, nobody raised any objection against reservation of Final Plot No.103 for public housing. However, after some time, Surat Municipal Corporation, contrary to the Town Planning Scheme No.15 and contrary to the purpose for which the area was reserved, started settling the slum dwellers in Final Plot No.103. The petitioners, who are residing in Final Plot No.98, have filed present writ application submitting inter-alia that the slum dwellers could not be settled in Final Plot No.103, because, the area was reserved for public housing. However, the submission is that the area if was available to the general public, then,

any part of it could not be reserved for a particular purpose because, phrase “public purpose” would not cover within its swift any reservation for any particular cast, section, caste or so. The respondent – Surat Municipal Corporation has appeared before the Court and have filed their counter affidavit. They have submitted that after finalisation of the Town Planning Scheme No.15, the land would vest free from all encumbrances in the Surat Municipal Corporation and the Surat Municipal Corporation would be entitled to put public property to its better use.

3. Mr.Desai, learned counsel for the Surat Municipal Corporation submits that only a very small part of Final Plot No.103 is proposed to be used for settling slum dwellers and if a very small part is so settled, then, there is no violation of the scheme.

4. On being asked that on which side of Final Plot No.103 or to what extent or for what area of Final Plot No.103, the Town Planning Scheme is modified by the Surat Municipal Corporation by settling the slum dwellers, Mr.Desai, learned counsel submitted that he does not have such

instructions in the matter. It is, however, submitted by Mr.Desai that if Final Plot No.103 is specifically reserved for public purpose, then too, the Corporation would be entitled to pray for appropriate amendment in the Town Planning Scheme on the ground of some mistake or irregularity in accordance with sec.70 of the Gujarat Town Planning and Urban Development Act, 1976 ("the Act" for short), or under special powers of the authority as vested in the authority under sec.71 of the Act.

5. Mr.Mengdey, learned Assistant Government Pleader for the State submits that once a Town Planning Scheme is finalised and particular plots are reserved for a particular purpose, then, the Corporation or any other public authority would have no powers to amend the Scheme or take in use any area for any purpose, other than for what it is earmarked. He submits that if Final Plot No.103 is reserved for public housing, then, the Surat Municipal Corporation was not entitled to settle slum dwellers, because, that would amount to creating a reservation in the earmarked plot and would amount to change of the scheme.

6. After hearing the learned counsel for the parties and on perusal of the records, I must record the following facts;

Town Planning Scheme No.15 was floated, it was considered by the public and ultimately, it was finalised as Final Town Planning Scheme No.15. Erstwhile Plot No.90 was registered as Plot No.103 and was earmarked for public housing. The word “public housing” is not defined in the Act and, therefore, this Court will have to go for dictionary meaning. The dictionary meaning of the public housing would only be a place reserved for construction of the houses for the members of public.

7. Once we talk of the public, then, the public would include all citizens of a particular area, township, city, district, province or the country. The word “public” within itself may include number of classes, casts etc. but if the property is reserved for public housing, then, any part of it, could not be specially reserved for slum dwellers, because, such reservation would amount to change in the scheme from public housing to housing for a section of the public or for a reserved class. The manner in which the purpose of the Town Planning Scheme is changed,

would clearly show that the Surat Municipal Corporation, without appreciating in true sense the Scheme for the reasons best known to it, started amending the scheme and changing the purpose. The Surat Municipal Corporation changed the purpose and amended the Scheme in lopsided and unilateral manner, the same cannot be approved. The action of Surat Municipal Corporation is contrary to law and it deserves to be condemned.

8. During the pendency of this writ application, or at any time, after final Town Planning Scheme No.15 was published, if the Corporation has settled the slum dwellers in any area of Final Plot No.103, then the Surat Municipal Corporation would be required to remove such slum dwellers from that particular area.
9. It is, however, made clear that this order shall come into effect after four months, enabling the Surat Municipal Corporation to make appropriate applications to the appropriate authority either under sec.70 or under sec.71 of the Act for modification of the Town Planning Scheme No.15. If the Surat Municipal Corporation fails in seeking

any amendment in the Final Town Planning Scheme No.15 on or before 14/9/2007, then, this order shall come in force immediately and the Surat Municipal Corporation would be obliged and duty bound to observe true spirit of this order. It is also made clear that if the Surat Municipal Corporation does not observe this order in its true spirit, then, the members constituting the Surat Municipal Corporation and its Chief Officer shall be exposing themselves to a serious risk.

10.The petition is allowed with a further direction that from today onwards, the respondent - Surat Municipal Corporation shall not be entitled to settle any slum dweller in Final Plot No.103. Rule is made absolute. No costs.

(R.S. GARG, J.)

rafik